

## **Senate Bill No. 1264**

### **CHAPTER 174**

An act to add Part 3 (commencing with Section 21310) to Division 11 of, and to repeal Part 3 (commencing with Section 21300) of Division 11 of, the Probate Code, relating to wills and trusts.

[Approved by Governor July 22, 2008. Filed with  
Secretary of State July 22, 2008.]

#### **LEGISLATIVE COUNSEL'S DIGEST**

SB 1264, Harman. Wills and trusts: no contest clauses.

Existing law, in relation to wills, trusts, and other instruments, defines and regulates no contest clauses, which are provisions in otherwise valid instruments that, if enforced, penalize beneficiaries if the beneficiaries file a contest with the court. Existing law provides that a no contest clause in a will or a trust is generally enforceable and defines a "contest" and "direct contest" in this regard. Existing law provides that certain actions do not constitute a contest unless expressly identified in the no contest clause as a violation. Existing law exempts certain contests from the enforcement of the no contest clause under specified circumstances, including if there is reasonable cause to believe that instrument has been revoked. Existing law permits a beneficiary to apply to a court for a determination of whether a particular motion, petition, or other act by the beneficiary would be a contest within the terms of a no contest clause.

This bill, beginning January 1, 2010, would revise, recast, and clarify these provisions. The bill would limit the application of a no contest clause to specific contests. The bill would redefine "direct contest," and would provide that a no contest clause may be enforced against a direct contest only when it is brought without probable cause, which the bill would define for these purposes. The bill would delete the provisions regarding the authority of a beneficiary to apply to a court for a determination regarding a no contest clause, as described above.

*The people of the State of California do enact as follows:*

SECTION 1. Part 3 (commencing with Section 21300) of Division 11 of the Probate Code is repealed.

SEC. 2. Part 3 (commencing with Section 21310) is added to Division 11 of the Probate Code, to read:

## PART 3. NO CONTEST CLAUSE

21310. As used in this part:

(a) “Contest” means a pleading filed with the court by a beneficiary that would result in a penalty under a no contest clause, if the no contest clause is enforced.

(b) “Direct contest” means a contest that alleges the invalidity of a protected instrument or one or more of its terms, based on one or more of the following grounds:

(1) Forgery.

(2) Lack of due execution.

(3) Lack of capacity.

(4) Menace, duress, fraud, or undue influence.

(5) Revocation of a will pursuant to Section 6120, revocation of a trust pursuant to Section 15401, or revocation of an instrument other than a will or trust pursuant to the procedure for revocation that is provided by statute or by the instrument.

(6) Disqualification of a beneficiary under Section 6112 or 21350.

(c) “No contest clause” means a provision in an otherwise valid instrument that, if enforced, would penalize a beneficiary for filing a pleading in any court.

(d) “Pleading” means a petition, complaint, cross-complaint, objection, answer, response, or claim.

(e) “Protected instrument” means all of the following instruments:

(1) The instrument that contains the no contest clause.

(2) An instrument that is in existence on the date that the instrument containing the no contest clause is executed and is expressly identified in the no contest clause, either individually or as part of an identifiable class of instruments, as being governed by the no contest clause.

21311. (a) A no contest clause shall only be enforced against the following types of contests:

(1) A direct contest that is brought without probable cause.

(2) A pleading to challenge a transfer of property on the grounds that it was not the transferor’s property at the time of the transfer. A no contest clause shall only be enforced under this paragraph if the no contest clause expressly provides for that application.

(3) The filing of a creditor’s claim or prosecution of an action based on it. A no contest clause shall only be enforced under this paragraph if the no contest clause expressly provides for that application.

(b) For the purposes of this section, probable cause exists if, at the time of filing a contest, the facts known to the contestant would cause a reasonable person to believe that there is a reasonable likelihood that the requested relief will be granted after an opportunity for further investigation or discovery.

21312. In determining the intent of the transferor, a no contest clause shall be strictly construed.

21313. This part is not intended as a complete codification of the law governing enforcement of a no contest clause. The common law governs enforcement of a no contest clause to the extent this part does not apply.

21314. This part applies notwithstanding a contrary provision in the instrument.

21315. (a) This part applies to any instrument, whenever executed, that became irrevocable on or after January 1, 2001.

(b) This part does not apply to an instrument that became irrevocable before January 1, 2001.

SEC. 3. This act shall become operative on January 1, 2010.